

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

JUL 25 1994

In the Matter of

Implementation of Section 26 of the )  
Cable Television Consumer Protection )  
and Competition Act of 1992 )

PP Docket No. 93-21 ✓

Inquiry into Sports Programming )  
Migration )

**Final Report**

**Adopted: June 9, 1994**

**Released: June 30, 1994**

By the Commission: Commissioner Quello concurring and issuing a statement;  
Commissioner Barrett issuing a statement.

**TABLE OF CONTENTS**

	<u>Paragraph</u>
I. INTRODUCTION	1
II. FINDINGS REGARDING MIGRATION IN INDIVIDUAL SPORTS	7
A. Professional Football	7
B. Professional Basketball	13
C. Professional Baseball	27
D. Professional Hockey	48
E. College Football and Basketball	59
F. Other Sports	87
III. PRECLUSIVE CONTRACTS	93
A. Background	93
B. Comments	97
C. Findings	113

IV.	SPORTS SIPHONING RULES	138
A.	Background	138
B.	Comments	141
C.	Findings	144
V.	ANTITRUST EXEMPTIONS	145
A.	Background	145
B.	Comments	146
C.	Findings	154
VI.	POLICY ISSUES	155
A.	The Definition of Migration	156
B.	Potential Causes and Consequences of Sports Programming Migration	161
C.	The NFL "Season Ticket" Package	168
D.	The Impact of Pay Media on the Availability of Sports Programming	172
VII.	RECOMMENDATIONS AND CONCLUSIONS	173
VIII.	ADMINISTRATIVE MATTERS	181

## I. INTRODUCTION

1. Pursuant to the Cable Act of 1992, the Commission has conducted an examination of "the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks, and pay-per-view services," and has attempted to determine "the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local colleges for broadcast on local television stations."<sup>1</sup> The 1992 Cable Act also instructed the Commission to analyze the "economic causes and the economic and social consequences" of migration trends and to submit to Congress "such legislative or regulatory recommendations as the Commission considers appropriate."<sup>2</sup> As directed, the Commission

---

<sup>1</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 26, 106 Stat. 1460, 1502-03 (1992) ("1992 Cable Act" or "Cable Act of 1992").

<sup>2</sup> Id.

submitted to Congress an Interim Report on July 1, 1993.<sup>3</sup> The 1992 Cable Act also instructed the Commission to submit a "final report," on or before July 1, 1994.

2. The Commission began its sports programming migration inquiry with a Notice of Inquiry, released February 9, 1993.<sup>4</sup> We defined sports programming migration as "the movement of sports programming from broadcast television to a subscription medium (i.e., one for which viewers pay a fee)" and sought information on the exhibition of sports events on broadcast and subscription media since 1980.<sup>5</sup> The inquiry has focused on six sports -- professional football, basketball, baseball, and hockey, and college football and basketball -- which have had significant broadcast and non-broadcast exposure.<sup>6</sup>

3. Based on an extensive record, the Commission tentatively concluded in the Interim Report that National Football League ("NFL") and college basketball games had not migrated to subscription media. With respect to National Basketball Association ("NBA"), Major League Baseball ("MLB"), and National Hockey League ("NHL") games, the Commission found that no migration had taken place at the national level. At the local level, there had been some shifts from broadcast television to subscription media, but the Commission concluded that "local migration has been isolated and relatively slight."<sup>7</sup> We found no evidence that college football games had migrated to subscription media, but noted that further inquiry was needed to determine the impact of preclusive contracts between college football conferences and video programming vendors (including broadcast networks) on the availability of college football games to local television stations.

4. In preparation of this Final Report, the Commission requested supplementary material in the Further Notice of Inquiry.<sup>8</sup> We sought additional information on the recent NFL, NBA, and MLB television and cable contracts, on contracts between college conferences and broadcast and cable networks, on specific instances of possible local migration, and on the cost of subscribing to cable sports services. We noted that our assessment of the consequences of sports programming migration and of preclusive contracts would be based on a public interest assessment that encompasses more than antitrust

---

<sup>3</sup> See Interim Report in PP Docket No. 93-21, 8 FCC Rcd 4875 (1993).

<sup>4</sup> Notice of Inquiry in PP Docket No. 93-21, 8 FCC Rcd 1492 (1993) ("Notice").

<sup>5</sup> The scope and availability of subscription media in earlier years was limited.

<sup>6</sup> We solicited comment on other sports and received a limited amount of information on them.

<sup>7</sup> Interim Report, 8 FCC Rcd at 4891.

<sup>8</sup> Further Notice of Inquiry in PP Docket No. 93-21, 9 FCC Rcd 1649, 1650-51 (1994) ("Further Notice"); see also Interim Report, 8 FCC Rcd at 4891.

concerns. The Further Notice also sought comment on whether there is a public interest in government action to promote free access to sports programming and invited proponents of government intervention to suggest remedial measures. It went on to seek comment on pay-per-view exhibition of sports events, the impact of expected substantial increases in subscription media channel capacity on the availability of sports on broadcast television, and the effect of sports antitrust exemptions on the sports programming market.<sup>9</sup>

5. With one exception, commenters on the Further Notice concurred with our conclusion that there had not been significant migration of sports programming from broadcast to subscription media. The Association of Independent Television Stations ("INTV") argued that the Commission should revise its definition of migration and that, in fact, significant migration of MLB games and college football games has taken place. INTV also is alone in arguing that preclusive contracts between college athletic conferences and video programmers have a significant impact on the availability of games for telecast by local television broadcast stations.

6. This Final Report is organized as follows: Section II contains findings regarding migration in individual sports, using the Commission's previously-adopted definition of migration; Section III addresses preclusive contracts with respect to college football; Section IV addresses the arguments for and against Commission "sports siphoning" rules; and Section V examines the sports antitrust exemptions. Section VI addresses a variety of policy issues, including the appropriate definition of migration, the impact of subscription media on the availability of sports other than the six on which we focused our inquiry, the NFL's plan to offer out-of-market games to sports bars and home satellite dish subscribers, and the potential causes and consequences of sports programming migration. Our recommendations and conclusions are in Section VII, and Section VIII addresses administrative matters.

---

<sup>9</sup> These issues, and some others that overlap with our own lines of inquiry, are raised in a Letter from the Honorable Edward J. Markey, Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives to the Honorable James H. Quello, Acting Chairman, Federal Communications Commission (July 22, 1993) ("Markey Letter"); see Further Notice, 9 FCC Rcd at 1651.

## II. FINDINGS REGARDING MIGRATION IN INDIVIDUAL SPORTS

### A. Professional Football

#### 1. Background

7. The Interim Report found that professional football had not migrated from broadcast to cable television, noting that every regular season and post-season NFL game was available on broadcast television, at least in the home market of the visiting team.<sup>10</sup> In the Further Notice, we requested information on the NFL's new exhibition agreements entered into since the Interim Report. In particular, we sought comment on whether the movement of the National Football Conference ("NFC") games from CBS to Fox Broadcasting Company ("Fox") will affect the availability of games on broadcast television.<sup>11</sup>

#### 2. Comments

8. According to the NFL, the League's television exhibition plan has remained essentially the same as it was under its prior contracts.<sup>12</sup> Under the new NFL broadcast and cable agreements, which extend through the end of the 1997 season, there will continue to be two or three Sunday games and one Monday night game broadcast each week in each market. There will also be Thanksgiving Day and Saturday broadcasts late in the season. NBC retains the rights to the American Football Conference ("AFC") regular season games and the AFC play-offs, including all AFC championship games, and has obtained exclusive broadcast rights to the 1996 and 1998 Super Bowl games. ABC will continue to have the right to air a package of Monday night games. All post-season games will be carried on one of the three broadcast networks, i.e., ABC, Fox or NBC.<sup>13</sup> TNT and ESPN will continue to share the rights to nationally televise one game each week, usually on Sunday night. TNT holds the right to carry Sunday night games during the first half of the season and ESPN will telecast nine regular season Sunday (and an occasional Thursday) night games and three pre-season games each season. ESPN's telecasts will be on an exclusive, nationwide basis, but ESPN (as well as TNT) will continue to be obligated to make its telecasts available to an over-the-air station in the home cities of the participating teams. According to ESPN and Turner

---

<sup>10</sup> Interim Report, 8 FCC Rcd at 4880.

<sup>11</sup> Further Notice, 9 FCC Rcd at 1651-52. We also requested comment on the NFL's plans to scramble its satellite feeds and sell packages of games to home satellite dish owners and commercial establishments. Id. We will discuss this issue below in Section VI.C of this Final Report.

<sup>12</sup> NFL Comments at 3; see ESPN, Inc. ("ESPN") Comments at 1-2; see also Interim Report, 8 FCC Rcd at 4879-80 (for more detail on the prior contracts).

<sup>13</sup> NFL Comments at 3, 5; NBC Comments at 4.

Broadcasting System, Inc. ("Turner"), the NFL created Sunday night coverage specifically for cable, so local and national football broadcasts have not decreased because of cable coverage.<sup>14</sup>

9. One difference between the previous and current NFL agreements is the substitution of Fox for CBS as the network carrier of the NFC games.<sup>15</sup> Time Warner Entertainment Company, L.P. ("Time Warner"), asserts that the NFL/Fox deal, among other things, demonstrates broadcasters' unfettered ability to acquire rights when they want to and the continued relegation of cable programmers to bidding only on those games broadcasters don't want. Time Warner states that Fox's emergence as a network carrying sports programming will likely result in more migration back to broadcast television. Time Warner further notes that CBS reacted to losing the NFC games by purchasing the right to telecast Southeastern Conference ("SEC") and Big East Conference ("Big East") college football games on a national basis, not by withdrawing from sports programming. According to Time Warner, events since the Interim Report affirm its original comments, in that, among other things, (1) the Super Bowl will remain on broadcast television, (2) cable programmers were only able to bid on NFL games that NBC, ABC and Fox did not take, demonstrating a pattern of "broadcaster-first" rights negotiations, and (3) the NFL and MLB arrangements show that the leagues strive to maximize their revenues without migrating to cable.<sup>16</sup>

10. The NFL claims that its contract with Fox has enhanced the competitiveness of the broadcast marketplace. By increasing the number of fully competitive broadcast outlets, the NFL submits, the NFL/Fox deal should also improve the competitive posture of broadcast television networks as compared to subscription media in the sports programming marketplace. The NFL believes the result will be "less migratory pressure" on professional football and other sports programming for the foreseeable future.<sup>17</sup>

11. Fox believes that its carriage of NFC games will not have a negative impact on the aggregate availability of games on broadcast television. In an attempt to bring its nationwide coverage to a level more comparable to the other broadcast networks, Fox has acquired twelve new affiliates nationwide, including eight former CBS affiliates, three former ABC affiliates and one former NBC affiliate. The addition of the twelve stations brings Fox's penetration to 97 percent of the country, as opposed to the 92 percent it had when it

---

<sup>14</sup> Turner Comments at 3; ESPN Comments at 1-2; ESPN Reply at 2-3; see also NFL Comments at 3-5.

<sup>15</sup> NFL Comments at 3. Another difference is that the Pro Bowl, which had been carried by ESPN since 1987, will move to ABC beginning next season. ESPN Comments at 1-2; NCTA Reply at 2.

<sup>16</sup> Time Warner Comments at 1-6.

<sup>17</sup> NFL Comments at 6-7.

signed the NFL agreement. Fox executives claim that "The NFL was critical to this deal."<sup>18</sup>

### 3. Findings

12. No commenters in this proceeding allege that professional football has migrated from broadcast television to cable programming and pay-per-view networks, either at a national or local level.<sup>19</sup> Furthermore, the record does not demonstrate that the NFC games moving from CBS to Fox will have any significant effect on the availability of NFL games on broadcast television. As some parties have stated, Fox's movement into the sports programming marketplace may indeed benefit the industry by increasing competition and benefit consumers by increasing the number of broadcast outlets carrying sports programming. We are not, therefore, concerned at this time that professional football is migrating away from free television to subscription services.

#### B. Professional Basketball

##### 1. Background

13. The Interim Report found no significant migration of professional basketball telecasts from broadcast to cable television, either at the national or the local level.<sup>20</sup> In the Further Notice, we requested any additional relevant information available on migration in the NBA context. Given that the NBA's national distribution contracts with NBC and Turner expire at the end of the 1993-94 season, we sought comment on the NBA's new contracts with NBC and TNT for national exhibition of league games, including the provisions limiting superstation telecasts and the status of the litigation over these provisions. We also specifically requested information on the decline in local exhibition of New York Knicks and Philadelphia 76ers games and on the Portland Trail Blazers games being offered through pay-per-view. More specifically, we sought comment on whether the 76ers had negotiated a new contract for local television broadcasts after the 1993-94 season and, if they had, the terms thereof.<sup>21</sup>

---

<sup>18</sup> Fox: NFL Contract Key to New Affiliates, Washington Post, May 25, 1994, at B6; Fox Comments at 2-3.

<sup>19</sup> But see infra Section VI.C regarding the NFL scrambling its signal for home satellite dish owners and commercial establishments.

<sup>20</sup> Interim Report, 8 FCC Rcd at 4881.

<sup>21</sup> Further Notice, 9 FCC Rcd at 1652. We requested comment on the superstation telecast limitation because, under the agreement in effect through the end of the 1993-94 season, some local NBA flagship stations which are also superstations, such as WTBS, WGN and WWOR, were able to distribute games locally over the air and nationally by cable. See Interim Report, 8 FCC Rcd at 4880-4881. With the exception of WTBS, however, this is no

## 2. Comments

14. As a general matter, the NBA asserts that last season the number of regular season games carried by broadcast and cable television combined was the highest in NBA history. The NBA further states that 736 games were broadcast in the 1992-93 season by local over-the-air stations, representing an all-time high and an increase of nearly 60 percent over the 1982-83 season, the earliest year for which the NBA presented figures.<sup>22</sup>

15. The NBA has entered into new national exhibition agreements with NBC and with Turner. Both agreements are four years in duration and expire after the 1997-98 season. Under its new contract, NBC will carry up to 61 games each season, including a minimum of 25 regular season games, as well as up to 28 NBA play-off games in prime time. The NBA notes that this is more than twice the 26 network broadcasts carried in 1982-83 season, which included only seven regular season games. The NBA also states that under its contract with NBC, NBC has agreed to guarantee the NBA \$750 million in rights fees. The contract provides that the NBA and NBC will share equally in advertising revenues if such revenues exceed an agreed upon benchmark. NBC notes that the agreement thus ties increases in rights fees to the underlying profitability of the television enterprise.<sup>23</sup>

16. The NBA's agreement with Turner provides that the Atlanta Hawks games will no longer be shown on Superstation WTBS, but will be licensed for local over-the-air broadcast and for regional cable carriage on SportSouth. WTBS will instead join TNT in carrying the NBA regular season games and a limited number of early play-off games. More specifically, TNT will carry 45 (down from 50) regular season games and will continue to carry 35 early play-off games; Superstation WTBS will carry 25 previously untelevised regular season games and ten new play-off games. With respect to the play-off games, TNT and WTBS will carry competing games, *i.e.*, different games televised at the same time. Turner will also telecast certain special events related to the NBA All Star Game. Furthermore, the NBA informs us that Turner has agreed to guarantee the NBA \$352 million in rights fees, and to share advertising revenues equally if they exceed a predetermined level.<sup>24</sup>

---

longer the case under the new national agreements. See infra ¶¶ 16, 18-19.

<sup>22</sup> NBA Comments at 1-2. We note that the NBA has submitted revised figures which indicate that 690 games were broadcast locally during the 1992-93 season. See Ex Parte Letter from Philip Hochberg, Counsel for the National Basketball Association, to Jonathan D. Levy, Office of Plans and Policy, Federal Communications Commission (June 1, 1994).

<sup>23</sup> For details on the contracts, see NBA Comments at 1-2, 4-5, NBC Comments at 4-5, and Turner Comments at 1-2.

<sup>24</sup> Turner Comments at 1-2; NBA Comments at 4.



17. Both the NBC and the Turner contracts contain restrictions on the rights of the league to license broadcasts. The NBC agreement, for instance, prohibits the NBA and its teams from televising any game at the same time as NBC is televising an NBA game. The games televised by Turner, however, may be simultaneously broadcast in the local markets of the competing teams. According to Turner, nothing in the newly signed contracts changes the trend of cable telecasts reviving basketball's popularity, and local TV and radio revenues have not suffered as a result of the NBA's high cable profile.<sup>25</sup>

18. In response to our inquiry regarding the litigation over the NBA's restriction on superstation telecasts (also called the "Same Night Rule"), Tribune Broadcasting Company ("Tribune") informs us that its superstation, WGN-TV, and the Chicago Bulls have sued the NBA in the U.S. District Court for the Northern District of Illinois, alleging that the NBA's exclusivity provisions, which restrict superstation telecasts, violate federal antitrust law. The litigation is in the final stages of post-trial briefing, and is awaiting a decision.<sup>26</sup>

19. The NBA believes that its Same Night Rule, which prohibits any other national cable distribution of any NBA game on the same night as Turner is telecasting a game (either on WTBS or TNT), has no relevance to sports migration because the rule only restricts national cable networks (such as WGN) from telecasting an NBA game in the national market on the same night that the NBA's national cable carriers telecast a game. According to the NBA, the rule does not restrict the over-the-air broadcast of NBA games in the local markets of the competing teams.<sup>27</sup>

20. New York Knicks. Madison Square Garden Corporation ("MSG") asserts that the decline in the number of locally broadcast Knicks games that occurred at the end of the 1989-90 season was not a result of migration, but of New York broadcast stations' lack of interest in carrying a meaningful number of basketball games.<sup>28</sup> According to the NBA, local broadcast of sporting events is not as common in New York as in other major cities. Consequently, the NBA submits that, in order to present New York fans with a regular package of high quality game telecasts, the Knicks have found it necessary to distribute their games to the New York area on the MSG cable network.<sup>29</sup>

21. Philadelphia 76ers. Through the end of the 1993-94 season, the Philadelphia 76ers games were carried on a combination of WPHL-TV (a local over-the-air station owned

---

<sup>25</sup> NBA Comments at 5; Turner Comments at 1-2.

<sup>26</sup> Tribune Comments at 2-5.

<sup>27</sup> NBA Reply at 2, 4.

<sup>28</sup> MSG Comments at 3-4; see also NBA Comments at 4.

<sup>29</sup> NBA Comments at 3.

by Tribune), Prism (a premium cable sports and movie service serving the Philadelphia market), and SportsChannel (a regional cable sports service carried on the basic tier).<sup>30</sup> No 76ers games are distributed on a pay-per-view basis. Rainbow informs us that prior to the 1991-92 season Prism only held rights to the 76ers home games. Since that time, Prism has held the local rights to exhibit all Philadelphia 76ers games and has shown some 76ers games on SportsChannel Philadelphia, a basic service, and some on Prism, a premium service. For the first three years of its current seven-year contract with Prism, the 76ers could and did reacquire the rights to ten away games (seven regular season and three post-season games) solely for local broadcast. Rainbow states that all ten games were, in fact, broadcast locally during each of these three years. According to Tribune, WPHL broadcast seven 76ers games each year for three years ending with the 1993-94 season. Rainbow states that the local broadcaster was only willing to pay a fraction of the per-game license fee Prism had paid, but that Prism and the 76ers nevertheless agreed to accept the reduced rate. The team's right to license ten games for local broadcast expired at the end of the 1993-94 season, leaving all regular season games for the next four years controlled by cable. According to Rainbow, Prism is negotiating with local stations regarding licensing 76ers games for local broadcast. According to the NBA, the 76ers have not signed a new agreement with WPHL-TV covering the 1994-95 season; however, the 76ers expect this relationship to continue. INTV states that there has been no explanation for the 76ers leaving WPHL-TV, other than that the station's advertising base could not support the higher bid necessary to outbid the Prism cable network.<sup>31</sup>

22. Portland Trail Blazers. The NBA claims that, in order to protect home game attendance, the Portland Trail Blazers generally do not license their home games for local broadcast. According to the NBA, making the Trail Blazers' games available on pay-per-view provides Portland fans with the opportunity to view games previously unavailable on television, while continuing to protect game attendance.<sup>32</sup>

23. Denver Nuggets. Citing press reports, INTV informs us that the Denver Nuggets recently decided to move the telecast of their home play-off games to pay-per-view within a 35-mile zone surrounding Denver. Away games regularly appear on television broadcast station KWGN, Denver, and home games appear on Prime Sports Network ("PSN"), which is carried on the basic cable programming tier. The play-off games will continue to appear on PSN's basic service outside the 35-mile zone. According to INTV, PSN says that it cannot keep the play-off games on basic because advertising revenues will not support the higher rights fees; INTV claims that this situation demonstrates that migration

---

<sup>30</sup> Id.; Rainbow Comments at 1-2. Rainbow Programming Holdings, Inc. ("Rainbow"), is the managing general partner of both Prism and SportsChannel.

<sup>31</sup> NBA Comments at 3; Rainbow Comments at 3-4; Tribune Comments at 5-6; INTV Reply at 55.

<sup>32</sup> NBA Comments at 4.

will continue at a local level.<sup>33</sup> According to an article submitted by INTV, the play-off telecast schedule does not indicate that the Nuggets regular season games will go to pay-per-view in the near future.<sup>34</sup>

24. Affiliated Regional Communications, Ltd. ("ARC"), claims that since the Interim Report, local broadcast coverage of NBA games has increased for each team with which an ARC service has entered or sought to renegotiate a contract. For example, on November 1, 1993, the Utah Jazz and Prime Sports Network-Intermountain West renewed their prior agreement which provides for carriage of five home games and twenty away games during the season. Local broadcast station KJZZ (co-owned with the Jazz) retains the rights to at least eight home and twenty away (a total of 28) regular season games and all away play-off games. In contrast, in the 1992-93 season, only 24 regular season Jazz games were scheduled for local broadcast.<sup>35</sup>

### 3. Findings

25. As stated above, the Interim Report found that there had not been any significant migration of professional basketball telecasts from broadcast to cable television, either at the national or the local level. We do not believe that the NBA's new exhibition agreements raise any additional concerns regarding the migration of professional basketball at a national level.<sup>36</sup> In fact, it appears that cable has simply supplemented broadcast television's carriage of basketball and provided consumers with more viewing choice.

26. We also find no evidence that significant migration of professional basketball is occurring at the local level. In general, cable sports carriage appears to supplement local broadcast television's coverage of professional basketball. With regard to the Knicks, commenters assert that any decline in local broadcast carriage is a result of a lack of broadcaster interest. With regard to the Denver Nuggets, the "migration" described by INTV is from basic cable service to pay-per-view service, and thus does not indicate sports migration as we have defined it. However, the Philadelphia 76ers' situation may well be a case of local migration, but the record before us does not clearly indicate the cause of the decline in broadcast coverage of 76ers games. Should cases of significant migration develop, we may revisit this issue in the future.

---

<sup>33</sup> INTV Reply at 55-56.

<sup>34</sup> Nuggets Home Playoff Games on Pay-Per-View, Rocky Mountain News, April 19, 1994, at 5B.

<sup>35</sup> ARC Comments at 8.

<sup>36</sup> Although the new contracts restrict superstation telecasts, these provisions apparently are intended to limit cable carriage of local games. We do not believe that the superstation restrictions present a migration issue.

**C. Professional Baseball**

**1. Background**

27. The Interim Report found that there has been a significant decline in the number of national, regular season television broadcasts of MLB games. The report concluded that the drop in the national, regular season broadcasts appeared to be a function of declining ratings rather than of migration to cable.<sup>37</sup> The Interim Report also found that the record indicated some instances of migration at the local level. In the Further Notice, we invited comment on migration of national and local broadcasts, on MLB's new national contracts with ABC and NBC and with ESPN, and on changes in local broadcasts, especially the MSG and WPIX-TV agreement for over-the-air carriage of New York Yankees games.<sup>38</sup>

**2. MLB's New National Broadcast Contract**

**a. Comments**

28. MLB has entered into a joint venture with ABC and NBC called "The Baseball Network" ("TBN"). TBN will telecast twelve regular season games in the second half of the season and will exhibit the All Star game and all post-season games.<sup>39</sup> MLB has no guaranteed rights fees under the agreement. MLB instead will take 87.5 percent of advertising revenues from the games until sales top a specified level, after which MLB's share drops to 80 percent.<sup>40</sup>

29. MLB explains that TBN will produce and market all regular season and post-season telecasts on national broadcast network television. The first broadcast network telecast each season will be the All Star Game. A weekly telecast ("Baseball Night in America") will be aired during each of the twelve weeks following the All Star Game. Telecasts during the first six weeks will be presented over the ABC network, while telecasts during the final six weeks will be presented over the NBC network. The networks have exclusive rights for the twelve regular season dates, in that no regional or national cable service or over-the-air

---

<sup>37</sup> Interim Report, 8 FCC Rcd at 4883.

<sup>38</sup> Further Notice, 9 FCC Rcd at 1652.

<sup>39</sup> This represents a decline in the number of regular season games from earlier baseball contracts.

<sup>40</sup> NBC Comments at 4; see also Big League Blackmail, Forbes, May 11, 1992, at 46. Under the four-year CBS contract that expired at the end of the 1993 season, CBS paid baseball \$1.06 billion for national broadcast rights and lost upwards of \$440 million.

broadcaster may telecast an MLB game on those dates.<sup>41</sup>

30. Under the new telecasting arrangement, TBN plans to produce a telecast for every one of the games to be played on the twelve telecast dates. Each telecast will then be delivered to that portion of the country in which it is likely to generate the greatest interest. MLB adds that, although fans will have access to twelve different network broadcasts of baseball during 1994, TBN will produce a total of up to 160 baseball telecasts for free television in 1994. Because all games on a given date will be telecast, TBN will have the ability to provide viewers with highlights and update coverage much the same as the networks do in their coverage of NFL regular season games. All regular season TBN telecasts will be broadcast in prime time in each time zone. TBN also seeks to generate viewer interest by televising regular season games on a regional, rather than on a national basis. By creating network-produced games of local interest during prime time, MLB anticipates that viewership will increase.<sup>42</sup>

31. Although changes have been made to improve ratings for regular season broadcasts, the focus of MLB telecasts has shifted from the regular season to the post-season. MLB has restructured the American and National Leagues and has created an additional round of approximately twenty play-off games. All additional games will be shown on broadcast television. Baseball clubs in each league have been realigned into three Divisions, resulting in a new round of play-offs (the Divisional Series). The Eastern and Central Division of each League contain five teams apiece, and the Western Division of each League contains four teams. At the end of the regular season, each League's three division winners and a "wild card" team (the second place team with the best record) will meet in the best-of-five divisional play-offs. The two winning teams then advance to the best-of-seven League Championship Series ("LCS"). MLB anticipates that by keeping more teams in contention for post-season play, the new format will increase fan interest and ratings will rise accordingly. MLB states that under the new telecasting arrangement, all post-season games will remain on free television. ABC and NBC will alternate coverage of the All Star Game and post-season games. The network telecasting the All Star Game will also carry the LCS, while the other network will carry the new Divisional Series and the World Series.<sup>43</sup>

32. MLB explains that the telecast of the LCS and Divisional Series will be regionalized. MLB states that under the CBS contract which expired at the end of the 1993 season, every LCS game was shown nationally. This required several games to be broadcast in the afternoon in order to accommodate all games in both leagues. In fact, baseball was the only professional sport that played post-season games during weekday afternoons. The result

---

<sup>41</sup> MLB Comments at 22-25.

<sup>42</sup> Id. at 22-23.

<sup>43</sup> Id. at 4, 24-25.

was that ratings for daytime LCS games declined 37 percent between 1985 and 1993.<sup>44</sup> MLB has addressed this situation by organizing all Divisional Series and LCS games on a regional basis and by playing them in prime time. MLB believes that this will ensure that the game fans are most interested in will be available at a time most likely to be viewed. MLB adds that the World Series remains a national broadcast. INTV notes that the World Series will be the only nationally-broadcast MLB games. INTV contends that MLB's decision to move away from "national" telecasts and towards "regional" telecasts will make it more difficult for local stations to contract directly with local teams. However, INTV does suggest the new network arrangement responds to what it sees as a public demand for local baseball broadcasts in prime time.<sup>45</sup> MLB believes the changes were necessary to address the current market for baseball broadcasts. MLB agrees that the number of baseball telecasts on national network television has declined but argues that any decrease in free telecasts of baseball, even when accompanied by an increase in subscription telecasts, cannot be presumed to constitute migration. When considering the decline in the number of national, regular season television broadcasts of MLB games, MLB says the evidence suggests that declining ratings have been the most significant factor contributing to decreased broadcaster demand.<sup>46</sup> MLB believes that prime time regionalization of MLB games and its new contract structure represent a reasonable response to a weakened demand for national, regular season MLB games.

**b. Findings**

33. The information submitted regarding the number of national, regular season television broadcasts does not lead us to change our finding in the Interim Report that the drop in those broadcasts is a function of declining ratings rather than migration to cable. Although the significant decline in ratings during the period since 1980 may not be the only reason for the decrease in national regular season broadcasts, it is clearly a significant factor. The record has shown throughout this proceeding that ratings for national regular season games have declined significantly during the period since 1980. This has led to a weakened demand from broadcasters. Moreover, the terms of MLB's current national television contract are consistent with our conclusion. MLB has moved games to prime time, has shifted the composition of games to post-season, and has agreed to a national network contract with no guaranteed rights fees. This represents a substantial change from previous agreements, and illustrates the fact that MLB has been forced to accept more risk than other professional sports leagues.<sup>47</sup>

---

<sup>44</sup> Id. at 24-25.

<sup>45</sup> INTV Comments at 9-11.

<sup>46</sup> MLB Comments at 5-6.

<sup>47</sup> MLB's agreement with ABC and NBC is riskier than other sports contracts, such as NBC's arrangements with the NBA and the NFL, which guarantee rights fees and bonuses. See supra ¶¶ 15-16; Fox's NFL Bid Drove Up Prices, Drove Out CBS, Broadcasting and

### **3. ESPN's Contract with MLB**

#### **a. Comments**

34. In September 1993, ESPN reached an agreement with MLB to extend ESPN's contract for national cable distribution of MLB regular season games. The new contract calls for ESPN to distribute approximately 77 regular season MLB games in each of the 1994 through 1999 seasons. ESPN has no rights to any post-season games. The games include Sunday evening single games, Wednesday night double-headers, and double-headers on opening day, Memorial Day, Independence Day and Labor Day. The contract contains limited exclusivity provisions. According to MLB, the agreement with ESPN will provide more than 60 million households nationwide with access to baseball telecasts that may not otherwise have been available. MLB argues that the substantial consumer benefits of the ESPN package would not be possible absent a grant of exclusivity.<sup>48</sup>

35. ESPN has no exclusivity on opening day and holidays, limited regional exclusivity on Sunday, and broader exclusivity on Wednesdays. MLB states that ESPN does not have "blanket exclusivity" on Sunday nights. According to MLB, nothing in the ESPN contract prohibits any club from authorizing the telecast of a Sunday evening game by an over-the-air station (other than a superstation) or by a regional cable network -- unless ESPN makes that same game available within the clubs home territory (which it may do only a limited number of times each season). Furthermore, MLB adds that there are few Sunday night games in the current schedule and asserts that, prior to 1990 when ESPN began televising baseball, MLB clubs typically did not play on Sunday evenings. For example, of the approximately 340 games scheduled to be played on Sundays in 1989, the year prior to the ESPN contract, only twelve games were scheduled to start after 5:00 p.m. Eastern Time ("ET") -- six of which were Texas Rangers games which start late due to the heat.<sup>49</sup> MLB contends that Sunday night baseball is essentially a new product. MLB will showcase a different stadium from around the league during each Sunday night telecast.<sup>50</sup>

36. As for the Wednesday night exclusivity provisions, MLB states that no competing local, over-the-air telecasts or superstation telecasts are permitted. However, local and regional cable coverage is permitted on Wednesday nights. MLB notes that there are

---

Cable, January 3, 1994, at 18-19.

<sup>48</sup> ESPN Comments at 2; MLB Comments at 32.

<sup>49</sup> MLB Comments at 3-5, 31-34. The ESPN agreement also does not place limits on Sunday afternoon telecasts.

<sup>50</sup> See Ex Parte Letter from Charlene Vanlier, Vice President and Washington Counsel for ABC, to Mr. William Caton, Acting Secretary, Federal Communications Commission (May 27, 1994) at 5.

some Wednesday games in the afternoon which are not restricted and that flagship stations would not necessarily televise all Wednesday night games. Flagship stations are broadcast stations licensed to the community in which a baseball team plays its home games. MLB adds that, on any given Wednesday night during 1989, two-thirds of the U.S. flagships were not televising baseball. Thus, many American households might not receive an over-the-air baseball telecast on a given Wednesday night regardless of whether ESPN was afforded exclusivity by MLB. MLB concludes that Wednesday night exclusivity notwithstanding, local broadcasters have far more games to choose from throughout the season than they have slots available to broadcast such games. MLB suggests that Wednesday exclusivity has just shifted locally televised games to other days. In fact, a broadcaster may televise approximately 140 games without offending the exclusivity provisions in MLB's national rights agreement.<sup>51</sup>

37. MLB provided output data for Wednesday broadcasts during the 1989 and 1994 seasons. MLB reports that there were 312 games played on Wednesdays in 1989, of which 40 were day games (4:05 p.m. ET or before), and 272 were night games. This represents 576 total telecasting opportunities (one game provides two telecasting opportunities -- one for each club).<sup>52</sup> In 1994, there will be 349 Wednesday games played of which 87 will be day games and 262 will be night games. This represents 648 total telecasting opportunities (taking into consideration that two expansion teams have been added to the league since 1989). MLB states that in 1989, despite the fact that flagship stations had the opportunity to broadcast 87 percent of the Wednesday evening games, only one-third of the flagship stations were broadcasting baseball on any given Wednesday.<sup>53</sup> INTV suggests that this is a misleading statistic. It asserts that "one would expect that one-half of the flagship stations would not be broadcasting because they would be broadcasting a 'home' game."<sup>54</sup> To justify its contention, INTV refers to MLB's claim that teams are interested in protecting the live gate. Thus, of the 26 teams in 1989, thirteen visiting teams were available to their flagship stations on any given Wednesday night. INTV claims that, using MLB's data, two-thirds of the flagships that which could reasonably be expected to carry Wednesday games (9 visiting team flagship stations) were in fact broadcasting MLB games on Wednesday nights in 1989.

---

<sup>51</sup> MLB Comments at 4-5, 7.

<sup>52</sup> Ex Parte Letter from Bruce A. Henoch, Counsel for the Office of the Commissioner of Baseball, to Jonathan D. Levy, Office of Plans and Policy, Federal Communications Commission (May 12, 1994). Telecasting opportunities for the Canadian teams are not included in the total.

<sup>53</sup> MLB Ex Parte Letter, supra note 52, at 3.

<sup>54</sup> Ex Parte Letter from David L. Donovan, Vice President, Legal and Legislative Affairs for Association of Independent Television Stations, Inc., to Jonathan D. Levy, Office of Plans and Policy, Federal Communications Commission (May 3, 1994); see also MLB Comments at 13-14.



38. MLB also submitted data on the number of flagship broadcasts by night of the week for the 1989 and 1994 seasons. MLB states that in 1989 there were an average of 36.1 flagship broadcasts on the five weeknights combined. In 1994, there is an average of 36.4 flagship broadcasts on Monday, Tuesday, Thursday and Friday nights combined.<sup>55</sup> MLB concludes that the ESPN contract has simply caused local broadcasters to carry more games on Monday, Tuesday, Thursday, and Friday to make up for the games no longer available. INTV asserts that ESPN's contract with MLB is a preclusive contract, in that it prohibits local stations from broadcasting games on Wednesday nights. INTV contends that this is especially egregious given that the exclusivity provision does not apply to regional pay cable channels. INTV also believes that ESPN has blanket exclusivity on Sunday nights. INTV concludes that ESPN's arrangement with MLB is nothing more than an attempt to limit output to enhance its competitive position, and suggests that the Commission should review ESPN's arrangement with MLB under the public interest standard of the Communications Act.<sup>56</sup>

#### **b. Findings**

39. We do not agree with INTV's assertion that the MLB agreement with ESPN is a preclusive contract as defined under the 1992 Cable Act. The Act discusses preclusive contracts when examining television coverage of college sports. Although the ESPN contract does contain exclusivity provisions, it is not considered a preclusive contract, even by analogy. After considering the total output of games, it seems clear that, although Wednesday nights do present a scheduling restriction for broadcasters, if the entire market is considered, the effect of the exclusivity provisions is more than offset by the available broadcast opportunities on other nights. Moreover, ESPN is providing 77 national games to 60 million households. While we understand INTV's concern that free over the air sports programming remain available to the broadcast television public, we cannot conclude that ESPN's contract with MLB presents a threat to free over-the-air broadcasts of baseball games.

### **4. Local Broadcasts**

#### **a. Comments**

40. We found in the Interim Report that some instances of local migration had occurred. MLB contends that it is providing the American public with more "free" broadcasts on local television than at any time in the past. MLB states that, in 1994, 28 baseball flagship stations are scheduled to present a total of 1,707 regular season telecasts (1,582 if the two expansion teams are not considered). This represents an average of 66 regular season games to be played by each club that will be televised on free over-the-air flagship stations.

---

<sup>55</sup> MLB Ex Parte Letter, supra note 52, at 5.

<sup>56</sup> INTV Comments at 5-9.

The 1,707 telecasts scheduled for 1994 represents a significant increase over the number of flagship telecasts presented in 1980 (the base year of this proceeding); the clubs presented a total of 1,392 flagship telecasts in that year. MLB adds that in assessing the amount of baseball programming available on free television, the Commission should consider the amount of baseball presented by regional broadcast networks (which consist of stations that rebroadcast the flagships' game telecasts). MLB states that 20 of the 26 baseball clubs have regional networks, and collectively there will be 188 regional broadcast affiliates in 1994. MLB concludes that cable programming services have provided fans across the country with additional viewing options, which offer a supplement to, not a substitute for, the telecasting of baseball by conventional broadcasters.<sup>57</sup>

41. INTV suggests that MLB's aggregate data on local telecasts mask a trend of migration of MLB games from local television. INTV examines the increase in local telecasts between 1980 and 1993 (which it calculates as 313 games) and claims that 270 of them (86 percent) should not be counted as evidence against local migration.<sup>58</sup> In particular, INTV rules out increased broadcast coverage by superstations, stations in markets with no regional cable network in 1993, stations in markets where broadcasts increased and cablecasts decreased, and stations in markets with limited cable carriage. INTV also examines six markets "where there has been a significant increase in cable exposure," and finds that broadcast coverage has dropped in each. It suggests that this supports the proposition that local baseball coverage is migrating from broadcast to cable. The increases in cable coverage for five of the six markets range from five to 64 games, while the declines in broadcast coverage range from two to 66 games.<sup>59</sup> After some additional analysis, INTV concludes that "the presence of a cable sports channel has been associated with a decline in games in 20 out of the 28 baseball markets."<sup>60</sup>

42. ARC criticizes INTV's discussion and suggests that the Commission should not ignore increases in local broadcast coverage of MLB games because of limited cable coverage or because the stations in question are superstations. ARC believes that INTV's selective statistical analysis provides no evidence of migration at the local level. Moreover, ARC

---

<sup>57</sup> MLB Comments at ii, 5, 17-18, Exhibit 1.

<sup>58</sup> INTV Comments at 13-15, Exhibit A; Ex Parte Letter from Robert Alan Garrett, Counsel for MLB, to Jonathan Levy, Office of Plans and Policy, Federal Communications Commission (May 4, 1993).

<sup>59</sup> INTV Comments at 15-16. One of the six markets, Boston, shows a decrease rather than an increase in cable coverage. The cable coverage changes are measured between 1984 and 1993, while the broadcast changes are measured between 1980 and 1993.

<sup>60</sup> Id. at 18.

criticizes INTV for comparing 1980-93 broadcast figures to 1984-93 cablecast figures.<sup>61</sup> MLB asserts that the INTV analysis "effectively concedes that there is no evidence of migration in the majority of the baseball markets" and also states that "the record in this proceeding is devoid of any evidence that particular broadcasters are being denied access to baseball games which they are 'ready, willing, and able' to televise."<sup>62</sup>

43. MLB states that there are numerous factors which may limit stations' interest in local baseball coverage. MLB notes that a baseball club's opportunities to place telecasts on over-the-air television are limited. Stations affiliated with one of the national broadcast networks generally have less interest in televising baseball because of their commitments to televise network programming. In this regard, the emergence of the Fox network has served to decrease interest in bidding for baseball telecasts. The creation of additional broadcast networks (such as those planned by Time Warner and Paramount) could further decrease the amount of time that broadcasters are willing to devote to baseball.<sup>63</sup> INTV suggests that there is simply no correlation between network affiliation and a reduced number of games appearing on a local station. INTV also believes that there is little evidence to support the theory that affiliation with the Fox network has led to a decline in a station's desire to carry local baseball. In addition, INTV states that MLB's claim that creation of new networks (Time Warner and Paramount) will decrease demand for baseball, is mere speculation.<sup>64</sup>

44. MLB also notes that the impact upon gate receipts is a major factor in any telecasting arrangement. Many clubs believe that telecasting home games on broadcast television reduces gate receipts. Two clubs (the Cubs and Braves, which are commonly owned with their flagship superstations) do televise a number of home games over those stations. However, the remaining 24 U.S. clubs will broadcast an average of only fourteen of their 81 home games in 1994.<sup>65</sup> That number has remained relatively constant since 1980. Because of the importance of gate receipts to clubs' financial health, most will likely continue their practice of broadcasting only a small portion of their home games. INTV asserts that the gate receipt issue will not necessarily contribute to a decline in the number games broadcast in most markets. INTV suggests that, in markets like Baltimore, where games are sold out in advance, restrictions on broadcast of home games are not necessary to protect the live gate. INTV argues that protecting the home gate is not a major factor in the decline of televised games; if protecting the home gate were the key factor, then all of the 81 away games could appear on local television without impacting the local gate. INTV believes that

---

<sup>61</sup> ARC Comments at 15-17.

<sup>62</sup> MLB Reply at 9-10.

<sup>63</sup> Id.

<sup>64</sup> INTV Comments at 41-42.

<sup>65</sup> MLB Comments at 13-14.

cable sports channels play an important role in reducing the unique value of a local station's rights fees. INTV adds that there is a discernable trend in which regional cable sports channels are securing all local television rights.<sup>66</sup>

45. In addition to looking at factors that may contribute to local migration, we specifically sought comment on the MSG and WPIX-TV contract for over-the-air carriage of New York Yankees games. MSG states that WPIX has contracted to broadcast fifty games per year through the end of the 1996 season. As part of the contract, MSG and WPIX will share revenues derived from the sale of broadcast rights to over-the-air stations beyond WPIX's coverage area. MSG claims it has made "business concessions" (including sharing its advertising revenue from cablecasting with WPIX-TV) to overcome the fact that five of the six New York commercial television stations were unwilling or unable to broadcast the Yankees games in the agreement.<sup>67</sup> MLB believes that the new contract is responsive to concerns that all Yankees games will be transferred to cable. MLB adds that at the time the Commission adopted its original siphoning rules, the Yankees were broadcasting approximately 68 games per year -- down from the 130 games that they had broadcast prior to entering into a contract with HBO for the telecast of several games on a subscription basis.<sup>68</sup>

#### **b. Findings**

46. We found in the Interim Report that some instances of migration had occurred at the local level. Commenters have brought to our attention the numerous factors that broadcasters consider in negotiating for MLB games. Considering the evidence, we cannot conclude that the decline in local broadcasts of MLB games that we have observed in a limited number of markets is a result of migration from local broadcasters.

47. We cannot accept INTV's analysis of local MLB broadcasts. As INTV recognizes in its reply comments, the figure of 1705 local games in 1993 that it used includes the two new expansion teams. Without them, the 1993 broadcast total is 1584. This represents an increase of 192 games over 1980. Of the 24 MLB teams in operation in both years, 17 increased their local broadcasts by a total of 349 games. One team stayed the same, and six teams had fewer local broadcasts (a total decline of 157 games) in 1993 than in 1980.

---

<sup>66</sup> INTV Reply at 44-45; INTV Comments at 19-20. INTV believes the most notable example of this involves the New York Yankees, where the MSG network owns all the television rights. INTV claims that local stations will no longer be in position to control whether games appear on off-air television. That right will belong to regional sports networks which compete with local stations.

<sup>67</sup> MSG Comments at 2-3.

<sup>68</sup> MLB Comments at 7-8.

Of the 157 game decline, 116 games are accounted for by the White Sox<sup>69</sup> and the Yankees.<sup>70</sup> If we were to take ARC's advice and focus on the 1984-93 period, the overall pattern is the same. During that period, fifteen teams increased their local broadcasts by a total of 256 games, seven experienced declines totalling 98 games, and two teams had no change in the number of local broadcasts. Moreover, we agree with ARC that it is not appropriate to ignore increases in broadcasts in the categories that INTV ruled out. Indeed, one of them -- increased broadcast coverage and reduced cable coverage -- could be consistent with "reverse migration." Although we are concerned with indications of migration at the local level, we see no evidence to indicate that our findings in the Interim Report should be modified. Accordingly, we reaffirm our conclusion that there is no pattern of migration of MLB games at the local level.

#### **D. Professional Hockey**

##### **1. Background**

48. As stated in the Interim Report, the NHL licenses all national telecasts of its games, while individual teams license local telecasts. In the Interim Report, we found that, with few exceptions, there was no national broadcast television carriage of NHL games after 1980. We concluded that hockey had not migrated from broadcast to cable on a national level because it had not been carried on national broadcast television in the first place. With respect to local carriage of the NHL, the Interim Report noted a slight decline in the number of local games broadcast between the 1981-82 and 1992-93 seasons, but could not identify a single cause for the decline, indicating that NHL local broadcasts could have declined due to

---

<sup>69</sup> The number of White Sox games broadcast locally was 114 in 1980 and 48 in 1993, a decline of 66 games. See MLB Ex Parte Letter, supra note 58. However, the big drop apparently occurred between 1980 and 1981. In 1981, the White Sox changed flagship stations from WSNS, channel 44, to WGN, channel 9, and WGN carried "more than 60" White Sox games, down from 114. See also Baseball!: Rights Go Out of the Park, Broadcasting, March 10, 1980, at 36; Baseball, Broadcasting, March 2, 1981 at 46. From 1982 to 1989, WFLD, channel 32, was the White Sox flagship station. Beginning in 1990, the White Sox returned to WGN, which was also the flagship station of the Chicago Cubs. See MLB Comments at 10-11; Baseball, Broadcasting, March 1, 1982, at 50.

<sup>70</sup> After examining the New York market in detail, we found no evidence that the number of Yankees games broadcast locally over the air would be appreciably different absent MSG's contract. New York has six commercial television stations, four of which are national network affiliates (WABC, WNBC, and WCBS and WNYW). The two independent stations, WPIX and WWOR, are likely to negotiate for local over-the-air coverage of Yankees games. However, WWOR currently has a contract to carry 72 New York Mets games. Therefore, WPIX appears to be the best positioned station to negotiate for local over-the-air coverage of Yankees games.

the increase in cable availability or to weakening demand. Nevertheless, we determined that this slight decline was no cause for concern.<sup>71</sup>

49. The Further Notice requested information on the NHL's divisional realignments. We also invited additional comments regarding the telecast of professional hockey generally. We expressed particular interest in pay-per-view exhibition of play-off games by the Chicago Blackhawks and the (former) Minnesota North Stars, and the decline in the number of New York Ranger games on broadcast television. We also explicitly requested information on reverse migration and asked whether any decision had been made regarding additional national broadcast television coverage of NHL games for the current season.

## 2. Comments

50. The NHL states that, since filing its comments in response to the initial Notice, two new teams have been added to the League -- the Florida Panthers, based in Miami, Florida, and the Mighty Ducks of Anaheim, based in Anaheim, California. In addition, the Minnesota North Stars have relocated to Dallas, Texas, and are now known as the Dallas Stars. The NHL has also realigned the league to promote a conference-based play-off format. The Prince of Wales and Campbell Conferences have been respectively renamed the Eastern and Western Conferences. Each conference includes two divisions: the Atlantic and the Northeast Divisions in the Eastern Conference; and the Central and Pacific Divisions in the Western Conference. Sixteen teams will now qualify for the play-offs (eight teams from each Conference) and will be ranked on the basis of their regular season records.<sup>72</sup>

51. ESPN is in the second year of a five-year agreement with the NHL, pursuant to which ESPN has the exclusive national rights to NHL games. Under this contract, ESPN carries one regular season game each week, and ESPN2 carries three games per week.<sup>73</sup> ESPN also provides almost complete coverage of all play-off games. Although ESPN has exclusive rights to each of the NHL games on a national basis, it is required to black out the home market of the participating teams in each game, in order to protect local coverage of local teams. Last year, ESPN purchased time on ABC for five Stanley Cup play-off games. This year, ESPN will distribute three regular season and three Stanley Cup play-off games to be broadcast nationally by ABC. ESPN plans to continue to work with the NHL to gain national broadcast exposure for games which would otherwise only appear locally or on ESPN and ESPN2.<sup>74</sup>

---

<sup>71</sup> Interim Report, 8 FCC Rcd 4884-85; see also NHL 1993 Reply at Appendix A.

<sup>72</sup> NHL Comments at 2.

<sup>73</sup> ESPN2 is a separate sports channel, usually carried on the basic or cable programming service tier.

<sup>74</sup> ESPN Comments at 4.

52. The NHL has expanded its national broadcast package for the current season. The NHL All Star Game was televised on NBC, and a total of over twenty games will be broadcast by ABC to various regions of the country over a six-week period. According to the NHL, this year's ABC package represents a significant increase over last year's five-week package. The NHL also has expanded its relationship with ESPN by adding an additional 75 regular season games on ESPN2 to the 25 games already on ESPN.<sup>75</sup>

53. The NHL states that the number of local over-the-air telecasts of regular season games has increased recently, even allowing for the effect of the expansion teams. In the 1993-94 season, 53 home games and 263 away games are scheduled for broadcast. Excluding the expansion teams, the numbers are 41 home games and 245 away games, which represents a 2.5 percent increase over last year.<sup>76</sup> As noted in the Interim Report, there has been a decline in the total number of local broadcasts since the 1981-82 season.<sup>77</sup> NHL submissions show that, if all expansion teams are excluded, the total number of local broadcasts dropped from 324 in 1981-82 to 242 in 1993-94, but much of the decline is concentrated in a few markets.<sup>78</sup>

54. The Chicago Blackhawks' home play-off games are shown on HawkVision, a pay-per-view service controlled by Rainbow. Rainbow assumed control over the television rights to the Blackhawk games in 1984. As far as Rainbow knows, no Blackhawk games have been locally broadcast since at least 1980. Rainbow asserts that no migration of Blackhawk games has occurred because the team has not permitted local broadcast of its home games in recent history. According to Rainbow, HawkVision televises games that would otherwise be unavailable to viewers, and pay-per-view exhibition of Blackhawk games thus represents an increase in viewing opportunities for Chicago-area hockey fans.<sup>79</sup>

55. MSG, the owner of the Rangers, states that the decline in the number of Rangers games that occurred at the end of the 1989-90 season was not the result of migration.

---

<sup>75</sup> NHL Comments at 3.

<sup>76</sup> Id.

<sup>77</sup> Interim Report, 8 FCC Rcd at 4900, Appendix C, Chart 10.

<sup>78</sup> See NHL Comments at Exhibit C; NHL 1993 Reply at Appendix A; NHL 1993 Comments at Appendix 2. Five teams experienced an increase totalling 54 games, while eight experienced a decrease totalling 136 games. One team experienced no change. Three markets -- New York (not including the New Jersey Devils, who moved from Colorado after the 1981-82 season), Boston and Hartford -- accounted for 103 of the 136 game decrease. The NHL notes that the Hartford franchise "went bankrupt and off-air." NHL 1993 Reply at Appendix A.

<sup>79</sup> Rainbow Comments at 4-5.

MSG claims that it was unable to find a broadcast television station willing to continue the schedule of games aired.<sup>80</sup>

56. In response to our inquiry about why there has been a greater increase in cable exhibition of sporting events since 1980 than there has been in broadcast exhibition, the NHL claims that there is more room for growth on cable than on broadcast television and that cable is able to respond to a much more specialized audience than broadcast television stations. The NHL believes that without cable television it would be without national television distribution and asserts that the findings of the Interim Report (that hockey has not migrated to cable on a national level) should be modified to reflect that hockey had to consider cable options to survive. The NHL also states that its use of pay-per-view is extremely limited and entirely local. According to the NHL, pay-per-view has expanded viewer choice by making additional games available and should therefore be considered pro-consumer.<sup>81</sup>

57. The NHL claims that INTV is the only party suggesting that regulation is either necessary or legally permissible. INTV does not, however, recommend regulation based on any data relating to NHL telecasts. According to the NHL, INTV focuses on college football, and extrapolates from alleged problems there to suggest a comprehensive regulatory scheme. According to the NHL, INTV's proposal is regulatory overkill and would effect sweeping changes in the way all sports programmers do business. The NHL adds that, even if there were no non-broadcast options, it does not necessarily follow that programming would "migrate" back to broadcast television. Instead, the NHL asserts, the absence of those options would result in a sharp reduction in, and a nearly complete loss of any national exposure for, some sports programming.<sup>82</sup>

### **3. Findings**

58. The comments submitted do not provide any additional evidence of migration of professional hockey games from broadcast television either on a national or local level. Before its exhibition on cable, professional hockey had virtually no national television exposure. Additionally, the NHL has demonstrated a recent increase in the number of hockey games broadcast locally. We therefore do not find any migration problem in professional hockey.

---

<sup>80</sup> MSG Comment at 3-4.

<sup>81</sup> NHL Comments at 2, 5.

<sup>82</sup> NHL Reply at 2.



## **E. College Football and Basketball**

### **1. Background**

59. The Notice requested data regarding the video distribution of college football and basketball games since 1980. In general, most collegiate commenters asserted that cable television coverage of collegiate athletics has not led to a decrease in broadcast coverage. Instead, they argued that cable has expanded the number and variety of collegiate events available to the public and, in many cases, events have been cablecast that would not otherwise have been shown on broadcast television.<sup>83</sup> We found in the Interim Report that there was no evidence of migration of college basketball games to subscription media. We also found that concerns with respect to preclusive contracts arose almost exclusively in the college football context. Therefore, while our Further Notice sought additional information on possible examples of migration or preclusive contracts in the college basketball context, we placed a higher priority on information regarding local telecasts of college football games.<sup>84</sup>

### **2. College Football**

#### **a. Comments**

60. INTV submits that there is evidence to demonstrate that college football games are migrating to cable, but several commenters contest this assertion. In its comments, INTV provides aggregate figures on college football telecasts for 1988-92. INTV provides 1984-92 data for three markets in its comments, and 1984-93 data for nine markets in its reply comments.

61. INTV's 1988-92 broadcast figures are for nationally-distributed games, i.e., games exhibited by the three major broadcast networks and those distributed by two syndicators to a group of stations assembled on an ad hoc basis. The figures cited by INTV show that, between 1988 and 1992, the number of college football games on CBS and NBC dropped from fourteen to seven, although games on ABC increased from sixteen to sixty. In the "non-network sector," INTV points out that the number of games distributed by the two broadcast syndicators cited in its data source declined from 64 in 1988 to 42 in 1992.<sup>85</sup> ARC and ESPN point out that, if the three networks and the syndicators are aggregated, the number

---

<sup>83</sup> Interim Report, 8 FCC Rcd at 4885.

<sup>84</sup> Further Notice, 9 FCC Rcd at 1652-53.

<sup>85</sup> INTV Comments at 27. The precise area over which the syndicated games were distributed is not specified. Syndicators generally strive to put together an ad hoc group of stations to carry their product in as broad an area as possible.